IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

WP(C).No. 11110 of 2007(V)

PETITIONER:

---

1. C.K.ABU, S/O.KOCHAHAMMED,
CHANGANCHERRY HOUSE, NEDUMTHODU,
MUDICKAL P.O., PERUMBAVOOR.

2. V.M.ABDULRAHIMAN, S/O.MUSTHAFA,
VARIKKANDAN HOUSE, NEDUMTHODU,
MUDICKAL P.O., PERUMBAVOOR.

BY ADV. SRI.M.M.ABDUL AZIZ (SR.)
SRI.M.A.ABDUL HAKHIM
SRI.JYOTHISH.J.KALLINGAL

RESPONDENTS:

---

1. PERUMBAVOOR MUNICIPALITY,
PERUMBAVOOR, REPRESENTED BY ITS SECRETARY.

ADD.2. STATE OF KERALA REPRESENTED BY SECRETARY,
LOCAL SELF GOVERNMETN DEPARTMENT
THIRUVANANTHAPURAM.

ADD.3. SENIOR ENVIRONMENTAL ENGINEER OF
POLLUTION CONTROL BOARD, ERNAKULAM.

(ADDL. RESPONDENTS 2 AND 3 IMPLEADED SUO MOTU BY ORDER DATED 30.3.2007 IN W.P(C).11110/07)

R1 BY SRI.V.M.KURIAN, S.C.
R2 BY GOVT. PLEADER SRI.K.J.MOHAMMED ANZAR
R3 BY ADV.SRI.M.K.CHANDRAMOHAN DAS, S.C.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P(C).No.11110 OF 2007

Dated this the 10th day of April, 2007

JUDGMENT

The first petitioner claims that he has been a wholesale fish merchant at Perumbavoor fish market and the second petitioner claims to be a registered head load worker of the Perumbavoor fish market. The Perumbavoor Municipality was the only respondent arrayed by the writ petitioners. The State of Kerala and the senior Environmental Engineer of the Pollution Control Board were impleaded suo motu as additional respondent Nos.2 and 3.

2. The first petitioner claims that in almost all recent past years, he was the successful bidder of the right to collect fee from vendors in Perumbavoor fish market and relies on Ext.P1 receipt dated 15.2.2006 issued to him for the last year. The petitioners contend that the Perumbavoor fish market is a public market established more than 70 years ago and has been in

continuance existence for the past more than 70 years. According to them, the Perumbavoor fish market is a combined market for fish and meat and the first respondent Municipality has invested more than Rupees three crores for the construction of modern slaughter house, fish stalls and other facilities in the market. Ext.P2 is copy of the public notice dated 23.2.2007 issued by the Municipality for sale of the right to collect fee from the fish market for the period from 1.4.2007 to 31.3.2008 by public auction on 6.3.2007. The petitioners point out that the Kerala State Pollution Control Board has issued certain directions to the Perumbavoor Municipality to stop its slaughter house till the same conform to the standards prescribed by the PCB for avoiding pollution. Those directions do not relate to management and continuance of the fish market. The petitioners allege that certain private persons, who are the favourites of the Chairman and some of the councilors of the Municipality, have established a rival market on the boarder of the Perumbavoor Municipality, in Vengola Panchayat, very close to the reputed and long existing Perumbavoor fish market. With the ulterior

and corrupt motive of helping them, the Municipal Council have decided to stop or close or abandon the reputed long existing Perumbavoor fish market. The petitioners refer to section 458 (3) of the Kerala Municipality Act and contend that the Municipality has no power or authority to close down any public market or part thereof without Government sanction. No Government sanction has been obtained by the Municipality in this case. On coming to know about the closing down of the market, a mass representation was submitted to the Municipality and Ext.P3 is the copy of the same.

3. Raising the above reasons and grounds, the petitioners pray for the following directions:

(i) a writ of mandamus or such other writ or direction compelling the respondent Municipality to manage and continue Perumbavoor fish market.

(ii) a writ of mandamus or such other writ order or direction compelling the Municipality to conduct the public auction notified in Ext.P2 for continuance of the Perumbavoor fish market.

4. When the writ petition came up for admission, Adv.V.M.Kurian received notice on behalf of the respondent Municipality. Upon State of Kerala and the Pollution Control Board being arrayed as additional respondents 2 and 3, notice was taken by Government Pleader Sri.K.J.Muhammed Anzar for R2 and by Adv.M.K.Chandramohan Das, standing counsel on behalf of R3, the Pollution Control Board.

5. On hearing initial submissions, I passed an interim order staying the municipality from closing down the Perumbavoor fish market. But I clarified that the order will not enable the petitioners to conduct business after 31.3.2007 without getting permission from the Municipality.

6. The Municipality has filed a detailed counter affidavit. It is pointed out therein that the petitioners have no locus standi to file writ petition. It is pointed out that the first petitioner, who was the bidder of the right to collect fee from the Perumbavoor fish market for the year 2006-07, defaulted payment of

Rs.32,000/- and therefore, he is not eligible to participate in the auction even if auction is held. As regards the second petitioner, it is pointed out that the Municipality has no head load workers and the Municipality does not know whether the second petitioner is engaged by anybody else for any work.

7. It is further pointed out that in a plot having 43 cents in extent, slaughter house and related facilities for keeping animals etc., fish market, dry fish stall, mutton stall, beef stall, fish stall etc. are all located. This plot is in the heart of the municipal town and very close to the municipal bus stand. The Pollution Control Board, on 10.3.2006, granted provisional consent for the slaughter house subject to compliance of the conditions fixed by them before 31.3.2006. The time is extended up to 31.12.2007. The Municipality is compelled to comply with the conditions specified by the Pollution Control Board before 31.12.2007. Ext.R1(a) produced along with the counter affidavit is copy of the relevant pages of the licence, wherein, the conditions stipulated by the Pollution Control Board are incorporated. It is submitted

that the slaughter house, fish market, fish and meat stalls etc. being situated in the same compound and in a very limited extent of land, it is very difficult to keep the premises clean. The solid and liquid waste from the fish market contribute to the pollution to a very large extent, both air and water. The indifference of the vendors to comply with the directions of the Municipality also contribute to the unhygienic condition of the plot.

8. The Municipality contends that it is absolutely necessary that simultaneously with the work of improvement of the slaughter house, the fish market and fish stalls and premises are also repaired and renovated. The work relating to the slaughter house and the fish market and premises cannot be isolated and carried out independent of each other. They have to be done simultaneously. This is why the council took Resolution No.34 on 28.2.2007 [Ext.R1(b)] to suspend the auction in respect of the slaughter house, fish market and fish and meat stalls for the year 2007-08 for the purpose of taking up the work of repairs and renovations simultaneously. There is no decision to close down

the market. The decision is only to suspend the functioning of the market for a limited period.

9. To the above counter affidavit, a detailed reply affidavit has been filed by the petitioners. It is pointed out therein that the requirement of repairs and renovation of the Perumbavoor fish market are pretexts to close the said market without getting sanction for the same from the Government, as required under section 458 (3) of the Kerala Municipality Act and with the ulterior and corrupt motive of helping the favourites of the Chairperson and some of the Councilors of the Perumbavoor Municipality, who have recently constructed a private market on the boarder of Perumbavoor Municipality in Vengola Panchayat. The Perumbavoor fish market and municipal slaughter house are distinct and separate from each other. The allegation that the work relating to slaughter house and fish market cannot be isolated and carried out independently is baseless. There is no access, entry or door from the slaughter house to the fish market. The fish market was always kept clean and neat and

does not require any repair or renovation as alleged. The fish market does not cause any air or water pollution or contribute to any unhygienic situation.

10. The buildings of slaughter house and stalls in the fish market are very recent modern constructions with marble flooring and do not require any repair or renovation as alleged. Exts.R3(a) and R3(b) relate to the slaughter house only and not to the fish market. A Waste Water Treatment Plant at the cost of Rs.18 lakhs for treatment of liquid waster from the slaughter house has been constructed by the Municipality. If the Municipality commissions the said plant, there will be no effluent from the slaughter house and the slaughter house also will be clean and neat and will not require the alleged repair or renovation. The Municipality is deliberately not inaugurating the Waste Water treatment Plant with the objective of helping the favourites of the Chairperson and some of the councilors who have recently constructed a private market on the boarder of the Perumbavoor Municipality very close to the fish market.

11. As regards the allegation that the first petitioner is a defaulter to the tune of Rs.32,000/-, it is pointed out that the first petitioner is paying the said amount to the Municipality and upon such payment, the disqualification referred to in the counter affidavit will cease to exist and the first petitioner will be fully qualified to participate in the coming auction. It is also pointed out in the reply affidavit that the wholesale fish business in Perumbavoor market is only during night and not during day time. Therefore, for the alleged repair and renovation of the fish market, the petitioner's wholesale fish business in the fish market during night need not be stopped. It is reiterated that any repair and renovation, even if necessary, can be done within a week or two.

12. Sri.M.M.Abdul Aziz, senior advocate and Sri.V.M.Kurian, standing counsel for the Municipality have addressed me extensively. I heard the submissions of Sri.M.K.Chandramohan Das, standing counsel for the Pollution Control Board as also

Sri.K.J.Mohammed Anzar, Government Pleader.

13. While Sri.K.J.Mohammed Anzar, Government Pleader submitted that Government sanction will be necessary for closing down any public market, Sri..M.K.Chandramohan Das would submit that it is obligatory that the Municipality complies with the pollution control measures which are insisted by the Pollution Control Board for continuance of the consent in respect of the slaughter house. The submissions of Sri.M.M.Abdul Aziz and Sri.V.M.Kurian were on the basis of the rival pleadings raised by the parties and the submissions centered mainly round the scope of section 458 (3) of the Kerala Municipality Act. Sri.V.M.Kurian submitted that Government sanction becomes necessary only when the Municipality decides to close down any public market. In the instant case, there is no such decision taken. The decision is taken only to suspend the functioning of the market for a limited period of time so that necessary repairs can be done, lest the consent issued by the Pollution Control Board in respect of the slaughter house should expire.

14. I do not think that this Court will be justified, proceeding under Article 226 of the Constitution, in attempting to resolve the question as to whether the municipal fish market requires repairs. The allegation of the petitioners that the decision to close down the fish market has been taken with the objective of helping certain favourites of the Chairperson and the councilors of the Perumbavoor Municipality cannot be considered for the simple reason that the petitioners have not chosen to implead the Chairman or the concerned councilors and much less the so called favourites.

15. Sri.V.M.Kurian assured me that once the necessary repairs are done, the fish market will be reopened. He submitted that approximately six months time may be required for completing the repair works so that the fish market and slaughter house will conform to the standards specified by the Pollution Control Board.

16. What I find from section 458 (3) of the Kerala Municipality Act is that sanction of the Government is necessary only when the Municipality decides to close down a public market or any part of the public market. I am unable to accept the submission of the learned senior counsel that the Municipality has decided to close down the fish market or part thereof. Ext.R1(b) supports the case of the Municipality that the decision to suspend the functioning of the fish market has been taken in the wake of the Pollution Control Board's order. There are no materials placed before me or to enable this Court to accept the learned senior counsel's case that the directions of the Pollution Control Board in respect of the slaughter house can be complied with without disturbing the fish market. At any rate, since the Municipality is firm in its stand that there is no decision to close down the fish market, I am not inclined to grant the relief sought for. The writ petition will stand dismissed. However, there will be a direction to the Municipality to complete all necessary repairs in the fish market within four months of receiving a copy of this judgment and to reopen the same. Once the first petitioner discharges all

his dues to the Municipality, he will also be permitted to participate in the auction if and when the Municipality conducts fresh auction regarding the right to collect fee from the fish market.

PIUS C.KURIAKOSE
Judge

kkb.